

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

RYAN NOECKER, on behalf of §  
himself and all others similarly situated, §  
Plaintiff, §

vs. §

TOPAZ FINANCIAL SERVICES, INC., §  
SWIFT ROCK FINANCIAL, INC., §  
MESA ROCK FINANCIAL, LLC, §  
DORCAS HOLDEN & §  
DERIN SCOTT a/k/a DEROM SCOTT, §  
Defendants. §

Case Number 5:10-cv-81-FB

**DEFENDANTS' DESIGNATION OF POTENTIAL WITNESSES,**  
**PROPOSED EXHIBITS AND TESTIFYING EXPERTS**

Pursuant to the Court's February 9, 2011 Scheduling Order (Docket No. 22), Defendants submit the following designations of potential witnesses, testifying experts and proposed exhibits:

**DEFENDANTS' ANTICIPATED FACT WITNESSES:**

Ryan Noecker  
All Opt-In Plaintiffs (or a representative sampling if mutually agreed upon by counsel)  
Derin Scott  
Dorcus Holden  
Randy Lepley  
Jim Miller  
Adelso Lemus  
Veronica Lemus  
Phillip Hekmati  
Gabriela De Hoyos

**DEFENDANTS' ANTICIPATED EXPERT WITNESS:**

Defendants designate Randy Lepley as a non-retained testifying expert and hereby provide the information required by Federal Rule of Civil Procedure 26(a)(2)(C). Mr. Lepley is expected to testify concerning his review and analysis of Topaz's and Swift Rocks' payroll records and time records for Plaintiffs, how those compare to the alleged overtime claims by the Plaintiffs, and the nature and scope of Plaintiffs' damages claims (including their overtime allegations). Mr. Lepley is also expected to testify about the Department of Labor's wage and hour investigation of Topaz and the results and resolution thereof. His anticipated testimony will be based upon the available Topaz and Swift Rock time and payroll records for the Plaintiffs, and other company data. He is expected to opine that the overtime claims of Plaintiffs are unsupported by the available company records. He will also opine upon the Plaintiffs' damages theories and calculations when Plaintiffs provide those in discovery. Mr. Lepley reserves the right to supplement this response as may be necessary or appropriate.

**DEFENDANTS' PROPOSED EXHIBITS:**

<b>Document Date</b>	<b>Document Description</b>
Various	Timekeeping records for the Plaintiffs during their employment with Swift Rock or Topaz
Various	Payroll records for the Plaintiffs during their employment with Swift Rock or Topaz
Various	Personnel files for the Plaintiffs during their employment with Swift Rock or Topaz
Various	Communications with the Department of Labor concerning the Department's wage and hour investigation of Topaz
Various	Communications between Plaintiffs and actual or potential customers of Topaz or Swift Rock made during weekend hours during the periods of Plaintiffs' employment with Swift Rock or Topaz

Defendants also reserve the right to designate any exhibits proposed by Plaintiffs (which Plaintiffs have yet to designate), and any documents produced by Plaintiffs during discovery. Defendants will supplement these designations as may be necessary or appropriate.

Respectfully submitted,

**FRITZ, BYRNE, HEAD & HARRISON, PLLC**  
98 San Jacinto Boulevard, Suite 2000

Austin, Texas 78701-4288  
Telephone: (512) 476-2020  
Telecopier: (512) 477-5267

By:   
Daniel H. Byrne  
State Bar No. 03565600  
Email: [dbyrne@fbhh.com](mailto:dbyrne@fbhh.com)  
Kevin W. Brown  
State Bar No. 24045222  
Email: [kbrown@fbhh.com](mailto:kbrown@fbhh.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day September 2011, a true and correct copy of the above and foregoing document was served upon the following parties via email, CMRRR and the Court's ECF service:

Bernard R. Mazaheri  
Morgan & Morgan  
20 N. Orange Ave., 16th Floor  
Orlando, Florida 32801  
[Bmazaheri@forthepeople.com](mailto:Bmazaheri@forthepeople.com)

  
Kevin W. Brown